

IN THE UNITED **STATES** DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EDWINA F. CLARKSON

CIVIL ACTION

V.

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:

PENNSYLVANIA STATE POLICE  
BUREAU OF LIQUOR CONTROL  
ENFORCEMENT, et al.

NO. 39-CV-783

MEMORANDUM AND ORDER

McLaughlin, J.

February 5, 2002

The plaintiff, Edwina Clarkson, was a Liquor Enforcement Officer ("LEO") employed by the defendant, Bureau of Liquor Control Enforcement of the Pennsylvania State Police ("Bureau"). The plaintiff sued the Bureau and her supervisors, alleging that they discriminated against her in violation of state and federal law. The Court presided over a jury trial on the plaintiff's claim that the Bureau retaliated against her for complaining that she and another LEO were sexually harassed by a fellow officer. The jury **was** unable to reach a verdict and the Court declared a mistrial.

The Bureau has moved pursuant to Fed. R. Civ. P. 50(b)(2)(B) for the entry of judgment as a matter of law against the plaintiff and in favor of the defendant. The Bureau argues that no reasonable jury could find (1) that any of the individual

incidents about which the plaintiff complains constitutes an adverse employment action cognizable under Title VII, or (2) that the defendant took action against the plaintiff because of her complaints about sexual harassment.

Judgment as a matter of law will only **be** granted **if**, after "viewing the evidence in the light most favorable to the nonmovant and giving it the advantage of every fair and reasonable inference, there is insufficient evidence from which a jury reasonably could find liability." McDaniels v. Flick, 59 F.3d 446, 453 (3d Cir. 1995) (quoting Lightning Lube, Inc. v. Witco Corp., 4 F.3d 1153, 1166 (3d Cir. 1993)). In assessing the sufficiency of the proof, the Court is not permitted to **'weigh** the evidence, determine the credibility of witnesses, or substitute its version of the facts for the jury's version." Id.

To establish that she **was** illegally retaliated against, the plaintiff had to prove the following three elements: (1) that she engaged in conduct protected by Title VII, (2) that the Bureau subjected her to an adverse employment action; and (3) that there **was a** causal connection between her protected conduct and the Bureau's adverse employment action. See Robinson v. City of Pittsburgh, 120 F.3d 1286, **1299** (3d Cir. 1997). Where a defendant offers a non-retaliatory reason for an adverse employment action, the plaintiff must then demonstrate that the reason offered is false and that retaliation was the real reason.

See Jones v. Sch. Dist. of Philadelphia, 198 F.3d 403, 410 (3d Cir. 1999) (citing McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973)).

The Court holds that no reasonable juror could conclude that the alleged adverse employment actions in this case were motivated **by** the plaintiff's **complaints**. The **Court**, therefore, will not reach the question of whether the incidents about which the plaintiff complains amount to adverse employment actions under Title VII.<sup>1</sup>

## I. BACKGROUND

Early in this litigation, all of the plaintiff's state **claims** and some **of** her federal claims were voluntarily dismissed. The defendants moved **for** summary judgment on the claims that remained: **the** plaintiff's claims under Title **VII** against **the** Bureau **and** her **claims** under Section 1983 against the individual defendants. The Honorable Norma L. **Shapiro** granted the defendants' **motion on** all but the plaintiff's Title **VII** claim **of** retaliation against the Bureau. The case **was** then reassigned to

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<sup>1</sup> **The** exception to this is an incident in **November of 1996**, discussed at the end of this opinion, in which the plaintiff testified that one of her supervisors engaged in a heated argument with *her* over a **change** to her **schedule**. The Court holds that while this incident was plausibly related to the plaintiff's protected conduct, it did not amount to an **adverse** employment action under the law.

this Court for trial, which was held on February 12-15, 2001 and ended in a mistrial when the jury failed to reach a verdict on the question of whether the plaintiff was retaliated against for conduct protected by Title VII.

Evidence at trial established the following undisputed facts. The plaintiff began the Bureau's thirteen-week training program, held at the Police Academy, in June of 1995. On June 28, 1995, one of her fellow cadets, Mekel Pettus, rubbed his groin against the plaintiff's shoulder blades during a training exercise. Two days later, the plaintiff made a formal complaint about Pettus, and the Academy initiated an investigation. The plaintiff's allegations were sustained in part and Pettus was suspended for one day without pay as punishment.

After the training program, the plaintiff was assigned to Philadelphia, which was on her "wish list" of offices to which she preferred to be assigned. Mekel Pettus was also assigned to the Philadelphia office. After the plaintiff arrived in Philadelphia, she asked her immediate supervisor, Mary Lou Corbett, that she not be required to work with Pettus during her probationary period. The plaintiff's request was granted with the exception of one week when the LEO who was training her - her "coach" - was out of the office. During that week, the plaintiff was assigned to work with Pettus and his coach, Valda Knight. The plaintiff observed Pettus sexually harassing Knight, and, in

October of 1995, she cooperated with an investigation into Knight's formal complaint against Pettus.

The plaintiff also participated in two **other** investigations during her first **few** months in Philadelphia, one into **whether** a **co-worker** was leaving work early, and one into **whether** a **co-worker** lied to his supervisors about who hit the plaintiff's car. The parties agree that the plaintiff's role in these two investigations was not protected under Title VII.

On November 16, 1995, Pettus was fired for a **variety** of performance problems. The meeting at which the firing was announced became very heated; many **officers** sided with Pettus and some **of** them blamed the plaintiff and Knight for the fact that he was fired. The plaintiff's supervisors announced that neither the plaintiff nor Knight was responsible.<sup>2</sup> The meeting was very stressful for the plaintiff; when it **was** over she fainted and **was transported to** the hospital.

Following Pettus' firing, the plaintiff perceived a change in the way that the other LEOs treated her. Both **parties** theorize that plaintiff's fellow officers believed that the **plaintiff - who** had participated in four official investigations since she began **her** training, and was, *in their eyes*, at **least**

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<sup>2</sup> The plaintiff's complaint that Pettus harassed her was handled by the Police Academy, not the Bureau, and **Valda** Knight's complaint was **still** under investigation in November of 1995. Thus, neither complaint was a factor in the decision to fire Pettus.

partially responsible for **Pettus'** firing - was untrustworthy. No one confronted her directly, but they had what the plaintiff characterized as "little side bar conversations" about her that she overheard. They considered her to be an internal affairs "plant," a "snitch," and a "rat." She overheard them speaking to Pettus on the phone about finding a lawyer to **help** him challenge his termination. In January, the plaintiff survived an attempt to remove her from the union.

Despite her problems with her peers, the plaintiff performed well during her first eight months as a **liquor** enforcement officer, receiving three excellent evaluations from Corbett, in October, December and April. In March, Corbett conducted **an** investigation into the plaintiff's performance during her probationary period, as she was required to **do**, and concluded that the plaintiff met the Bureau's standards of professionalism and should **be** retained with no conditions applied. It **was** not until May of 1996 that the plaintiff received her first bad evaluation and began clashing with her supervisors.

On **August** 27, 1996, the plaintiff requested a transfer to another office on the ground that **she** was being harassed by her **peers**. The plaintiff's request for a transfer was denied, but her **allegations** of **harassment** set into motion a formal investigation. As part of that investigation, the **plaintiff was**

asked to swear out a complaint, which she did on September 26, 1996. In her complaint, the plaintiff alleged that certain of her co-workers were orchestrating a campaign of harassment against her, that Corbett gave her a negative evaluation because Corbett's own evaluation had been downgraded due to the **fact** that the plaintiff often by-passed Corbett and brought her problems directly to then-Sergeant John Lyle, and that Lyle was an ineffective leader.

Beginning in November of 1996, after a confrontation with Sergeant Lyle which was especially distressing to the plaintiff, she took a four-month leave of absence on the advice of her doctor. During her leave of absence, the plaintiff applied for and was offered another job, which she accepted. On March 21, 1997, the plaintiff returned to work at the Bureau. She resigned on **April 5**, 1997.

## II. ANALYSIS

At trial, the plaintiff's attorneys alleged that the Bureau retaliated against her for her role in the June 1995, October 1995 and September 1996 investigations in three main ways: (1) by forcing her to work in the same office, and, for one week, on the same team, as Pettus; (2) by being overly critical of her work and subjecting her to work-related discipline,

beginning in May of 1996; and (3) by failing to intervene to protect the plaintiff from being harassed by her co-workers, including **denying** her request for a transfer to another office. The plaintiff **also** alleged that, in November of 1996, her supervisors failed to submit a request she made for uniformed back-up in retaliation for her protected **activity**, and that, on November 14, 1996, Sergeant Lyle retaliated against her by loudly arguing with her and putting his finger in her face.

The Court will begin by addressing the plaintiff's allegation that the Bureau retaliated against for her complaints about Pettus in June and **October** of 1995. First, although the Bureau did assign the plaintiff and Pettus to the same office **and did** assign **her** to work closely with him for one week, it has offered valid reasons for doing so. The plaintiff put the Philadelphia office on her "wish list" and she was **assigned** there **in** part for that reason and in part because female and minority officers were needed there. See TT. at 2-132. Pettus **was** assigned to Philadelphia because of the need for minorities. The plaintiff did not put on any evidence that these were not **the** real reasons that she and Pettus were assigned to the same office. There is therefore no basis to infer that the assignments were made in retaliation for the **complaint** she made **while** she was at the Academy.



with regards to the week that the plaintiff had to work more closely with Pettus, it **was** Sergeant **Lyle** - who did not **know** about the incident with Pettus at the Academy - who assigned her to work with Knight and Pettus. Because Sergeant Lyle did not know about the plaintiff's complaint that Pettus harassed her, he could not have retaliated against the plaintiff **for it**.

**The** plaintiff argues that when Corbett found out that the plaintiff had been assigned to work with Pettus **for** one week, Corbett failed to intervene in retaliation for **the** plaintiff's complaint about Pettus at the Academy. However, Sergeant Lyle, who was Corbett's superior, testified that he made the emergency assignment and that **Corbett had** no input into his decision. See TT. at 2-226. **That** Corbett did not contest Lyle's decision **is** understandable given that the plaintiff accepted the assignment without complaint. See TT. at 1-43. The absence **of** retaliatory motive **is** further evidenced by the fact that Corbett did intervene on the plaintiff's behalf later that **year**, when she arranged for the Bureau to pay for the medical treatment **the** plaintiff received when she fainted. See TT. at 1-55.

Regarding the plaintiff's second argument, she put on evidence that, beginning on **or** about May of **1996**, her supervisors began to criticize the **quality** of her **work** and to discipline her for a variety **of** infractions. The plaintiff did not testify that

the criticism of the quality of her work was unwarranted, or that her supervisors acted more harshly towards her **than** towards anyone **else**.<sup>3</sup> The plaintiff acknowledged that she had trouble concentrating on her paperwork, that, most of the time, when she received a correction notice regarding one of her reports it was because she had made a mistake and that she assumed that other people received correction notices too. See TT. at 1-64, 2-65-66.

In any event, the timing of events in this case prevents a finding that the plaintiff's supervisors retaliated against her **by** criticizing her **work**. The plaintiff complained about Pettus in June and then in October of 1995. She subsequently received three excellent evaluations and a positive retention recommendation from Corbett. At Christmas time, Bettina Bunting, a supervisor with whom the plaintiff would later clash, wrote her a note praising the plaintiff for her courage and kindness, which Bunting termed "wondrous." Trial Exhibit 42.

It was not until May of 1996 that the plaintiff received her first negative evaluation. The plaintiff has offered **no** explanation for why, if Corbett and Bunting wanted to retaliate against **her** for complaining about Pettus, they would

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<sup>3</sup> The plaintiff does allege that her supervisor's criticism of her integrity was unwarranted. TT. at 1-64.

wait seven months to do **so** and in the interim issue three positive evaluations and a positive retention recommendation **and** write her a **seemingly-heartfelt note**.

In **addition** to the negative evaluations that she received, the plaintiff alleges that her supervisors retaliated against her by disciplining her. For example, in May of **1996**, after she had used all but 3.5 hours of **sick** leave, the plaintiff was placed on mandatory medical certificate status. On one occasion, according to the plaintiff, she became **sick** while at work and was not permitted to leave **because** she **did** not have a doctor's **note**. See TT. at 1-75. On another occasion, **she** had a confrontation with Corbett over leave she took to **care for her** son when he was ill. See TT. at 2-9.

The plaintiff does not dispute that she used all of the sick **leave** that she earned during her tenure at the Bureau and she did not testify that others who did so were treated differently from her. See TT. at **1-74**. She failed to make any showing that her supervisors, treatment of her use of **sick** leave **was** related in **any way to** her complaints about Pettus the prior year.

The **plaintiff** testified to several other **incidents** in which she was **subject to discipline**. None of them **is plausibly related to her** complaints the year before. For example, in June

of 1996, as the plaintiff was preparing to **take** six weeks **of** military leave, Bunting ordered her to fill out certain forms before she left. See TT. at 2-6-7. The plaintiff thought that Bunting meant that she had to fill out the forms **before** she **left** for the military, **and** so, planning to come in the next day, **she** left the office without completing them. See TT. at 7. **Bunting** testified that she ordered the plaintiff to complete the forms that day and that the next *day* would **have** been too **late** because the plaintiff's military leave **would** have officially begun. See TT. at 3-58. Bunting required the plaintiff to return to **the** office that day to complete the forms and issued her **a** written reprimand **for** failing to **obey** her order. Without more, it would not **be reasonable** to conclude that this dispute **over** forms in June of 1996 **was** causally related to the plaintiff's report **of** sexual harassment nearly a year beforehand. There **is** no evidence **to** support **a** finding that Bunting's rationale for punishing the **plaintiff** was pretextual.

The plaintiff's third argument **is** that **the** Bureau retaliated against her by failing **to** intercede to stop her **co-**workers from "harassing" her. This argument is intertwined with her second argument, discussed above, because the **plaintiff** seems to suggest *that* the reason her work **declined** in **quality** **after** **she** had been **at** the Bureau for approximately nine months was that she

could no **longer** endure **the** harassment **from her** peers. **She** contends that when she turned to **her supervisors for redress**, they were not only unsympathetic, **they** criticized **her** work. **The** plaintiff testified **as** follows with regards to her annual review: "I had **been** discussing with my immediate supervisor on a number of occasions, **the** concerns I had as far as my fellow officers were concerned and...when I **received** my evaluation, it appeared as though...she didn't understand where I was coming from." TT. at 1-66.

**The** Court finds that it would be unreasonable to conclude that the Bureau failed to respond to **the** plaintiff's complaints of harassment in retaliation for her participation in the investigations into Pettus' misconduct.<sup>4</sup> **The Bureau** alleges that while the plaintiff would complain **of** harassment she **repeatedly** refused to tell her supervisors, for example, what exactly was **said**, when and **by** whom. See TT. at 2-146. The plaintiff did not testify to a single specific instance of

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<sup>4</sup> This claim must be distinguished from the more straightforward one that the Bureau **discriminated** against the plaintiff on the basis **of** her sex **by** failing to address the problems with her **work** environment. The claim is rather **that** the Bureau **failed** to address the problems as a way of retaliating against her for **the** complaints she made about Pettus. The **plaintiff's Amended** Complaint did include a "hostile work environment" claim, **but** summary judgment was granted in the defendant's favor on that claim **for** failure to exhaust administrative remedies.

harassment that she reported to her **supervisors** to **which** the Bureau **failed to** respond.

**When** the **plaintiff** made specific complaints, **her** supervisors took action on her behalf. For example, when her co-workers did not volunteer for one of her raids, **Corbett** arranged for the support **she** needed. See TT. at 1-59. **When the** meeting **in** November turned hostile, her supervisors took her side. The Bureau paid for her medical treatment, and Sergeant Lyle encouraged her to come to him whenever she needed. See TT. at 1-55-56. **The** plaintiff **took him** up on **his** offer whenever **she** needed to talk and Corbett was unavailable. See TT. at 1-59, 2-46-47. Lyle also advised the plaintiff to turn to a members assistance counselor *for* assistance, which **she** did.

The Bureau's decision not to respond **to the** plaintiff's **generalized** allegations **of** hostility directed **towards all** of her co-workers is especially **understandable** given her **admission** on cross-examination that none of her **fellow officers** was ever anything less than professional in *the* field and that she had no **problems** working **in** concert with them. See TT. at 2-52. It would not be reasonable **to** conclude that the plaintiff's supervisors would have done more but for the fact that they were retaliating **against** her **for** complaining about Pettus, whom **they** fired.

The plaintiff also **alleges** that her **supervisors** failed to protect **her by** denying her request to transfer to another **office**. On April 2, 1996, the plaintiff made **a** written request for **a** transfer. See Exhibit 23. She also met with Sergeant Lyle **and** Lieutenant Mark Lomax, and **told** them that her working conditions had become intolerable and that she wanted **a** transfer. See TT. at 1-70-71. Lieutenant Lomax told her that her request for a transfer was improperly made, and he told her the proper way to **do** it. See TT. at 1-72. **Five months later, on August 27, 1996,** the plaintiff submitted a second transfer request. See TT. at 1-78, Trial Exhibit 32.

The plaintiff's request for a transfer was denied. **An** investigation into the alleged harassment, however, **was** initiated. See TT. at 2-174. No reasonable juror could conclude that the plaintiff's request for a transfer was denied in retaliation **for** the complaints she made a year earlier about an officer who was **fired** before the end of his probationary period. It would also not be reasonable **to** conclude that it was denied in retaliation for her participation in the investigation into her September 1996 harassment allegations, because that investigation was initiated by the same **supervisor**, Captain James Corcoran, who **issued the denial** of her transfer request.

Finally, the plaintiff *points to* two incidents which

she **claims** constituted retaliation both for **the** two complaints against Pettus and for her September 1996 harassment complaint. First, the plaintiff **makes** the serious allegation that on one occasion two **of** her **supervisors**, Corbett and Jeff Lawrence, failed to process her **request** for **back-up** from uniformed officers for a **raid** she organized. The Bureau presented documentary evidence to support their claim that they **did** process her request. See Trial Exhibit 35. It is not plausible that **Corbett or** Lawrence, both of whom came along on the raid, would put **themselves** as well as a large contingent of their **officers** (14 including the plaintiff) in danger to retaliate against **the plaintiff** for her complaints. It is also not plausible that Sergeant Lyle, who **was** ultimately responsible for forwarding requests for back-up, would put such a large number of **officers** in danger to retaliate against just one of them.

Second, in November **of 1996**, the plaintiff requested that her **schedule** for one day be pushed back two hours. In **response**, Corbett changed her schedule not just for that day but for the entire week.<sup>5</sup> When the **plaintiff went** into Sergeant Lyle's office to complain about the schedule change, he dismissed

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<sup>5</sup> Corbett testified that **she** did so **because** the plaintiff's proposed change would have meant that the plaintiff was unable to **investigate illegal** sales of alcohol after hours. See TT. at 3-35.



her complaints as being more appropriately directed to Corbett. The two then began arguing about his unresponsiveness to the plaintiff's complaints more generally. After the plaintiff had returned to her desk, Sergeant Lyle came out of his office and walked over to the plaintiff's **desk**. He put his finger in her face and told her that what she was doing was "not fair, that **it's** bullshit and that if [she] wanted to file a grievance, there's a thousand manuals over there for [her] to go to file whatever kind of grievance that [she] wanted to[.]" TT. at **2-12**.

It **would** be reasonable to conclude that both Corbett and Sergeant Lyle were angered by the plaintiff's criticism of them in the complaint she made out as part of the September **1996** investigation. However, neither the change in the plaintiff's schedule, which she conceded was not "necessarily" unfair, nor the heated argument **she** had with Lyle over the change, amounted to an adverse employment action. See TT. at **2-93**. The plaintiff never worked the disputed **hours**, and the argument had no repercussions beyond the fact that it upset her. **A** reasonable jury could not conclude that the dispute over the plaintiff's schedule had a material, tangible impact on the terms or conditions of the plaintiff's employment with the Bureau.

For all **of** the above **reasons**, the **defendant's** motion for judgment in their **favor** as a matter of law **is** granted.

***An appropriate order follows.***

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EDWINA F. ~~CLARKSON~~

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CIVIL ACTION

V.

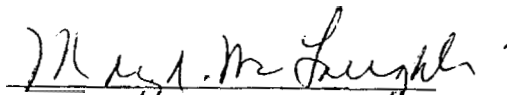
PENNSYLVANIA STATE POLICE  
BUREAU OF LIQUOR CONTROL  
ENFORCEMENT, et al.

NO. 99-CV-783

ORDER

AND NOW, this 5<sup>th</sup> day of February, 2002, upon  
consideration of defendant's motion for judgment as a matter of  
law (Document #65), the plaintiff's response thereto and the  
defendant's reply, it is hereby ORDERED and DECREED that the  
defendant's motion is GRANTED for the reasons stated in a  
memorandum of today's date.

BY THE COURT:

  
~~MARY~~ A. McLAUGHLIN, U.S.

red 4/6/02 to:

Claudia Isaac, Esq.  
Jennifer B. Lehman, Esq.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EDWINA F. CLARKSON

CIVIL ACTION

v.

PENNSYLVANIA STATE POLICE  
BUREAU OF LIQUOR CONTROL  
ENFORCEMENT, et al.

NO. 99-783

CIVIL JUDGMENT

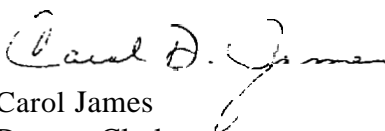
Before the Honorable Mary A. McLaughlin:

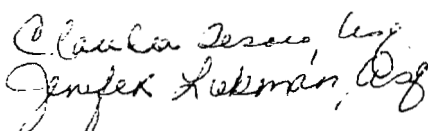
**AND NOW**, this 6th day of February, 2002, in accordance with Rule 58 of the  
Federal Rules of Civil Procedure,

**IT IS ORDERED** that Judgment be and the same is hereby entered in favor of  
defendant, Pennsylvania State Police Bureau of Liquor Control Enforcement, et al. and against  
plaintiff, Edwina F. Clarkson.

BY THE COURT

ATTEST:

  
Carol James  
Deputy Clerk

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civjud.frm